

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**ARCHER AND WHITE SALES, INC.**

**Plaintiff,**

**v.**

**HENRY SCHEIN, INC., DANAHER  
CORPORATION, INSTRUMENTARIUM  
DENTAL, INC., DENTAL EQUIPMENT,  
LLC, KAVO DENTAL TECHNOLOGIES,  
LLC, AND DENTAL IMAGING  
TECHNOLOGIES CORPORATION,**

**Defendants.**

**Civil Action No. 2:12-CV-00572-JRG**

**JOINT SUPPLEMENT TO STATUS REPORT**

Pursuant to the Court's August 20, 2019 Order, Dkt. No. 424, setting a Status Conference for August 28, 2019, the parties file this joint submission outlining their positions on "how to best schedule this case for trial." Order, Dkt. No. 424.

# **1. Plaintiff's Position.**

On January 19, 2018, this Court issued a Third Amended Docket Control Order setting trial for May 14, 2018. Dkt. No. 346. On March 2, 2018, the Supreme Court issued a stay pending a petition for a writ of certiorari, Dkt. No. 399, and on June 25, 2018, the Supreme Court granted the petition for a writ of certiorari and stayed the case pending its decision and judgment, Dkt. No. 406. The Supreme Court issued its decision on January 8, 2019, and issued its judgment on February 11, 2019.

After the case returned to the Fifth Circuit on remand, that Court ordered supplemental briefing and scheduled oral argument. Following oral argument, the Fifth Circuit issued its published opinion on August 14 affirming the decision of this Court denying the motion to compel arbitration. Although defendants may choose to file a motion for rehearing, there is no reason for this Court to countenance any further delay in this matter.

Because the dates in the Third Amended Docket Control Order have now passed, a new Docket Control Order is necessary. Archer proposes the schedule below:

<b>Original Date</b>	<b>Proposed Date</b>	<b>Event</b>
May 14, 2018	January 6, 2020	Trial commences
April 30, 2018	January 6, 2020	Jury Selection
April 5, 2018	December 13, 2019	Final Pretrial Conference
April 2, 2018	December 6, 2019	Serve Objections to Exhibit Lists, Witness Lists, Deposition Designations and Counter-Designations
April 2, 2018	December 6, 2019	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the

		Court and e-mail the Court Reporter, Shelly Holmes, at <a href="mailto:shelly_holmes@txed.uscourts.gov">shelly_holmes@txed.uscourts.gov</a> .
March 23, 2018	October 18, 2019	File Joint Pretrial Order, Joint Proposed Jury Instructions and Form of the Verdict, Responses to Motions in Limine, Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations.
March 2, 2018	September 26, 2019	Initial Pretrial Conference to address pending motions

## 2. Defendants' Position.

As set forth in the parties' Joint Status Report, Dkt. No. 423, Defendants respectfully contend that it is premature to enter an amended docket control order at this time and request that the matter continue to be stayed pending resolution of the appellate process. A continuation of the Court's stay while the Fifth Circuit resolves the Fifth Circuit Appellants' forthcoming en banc petition would not materially prejudice Plaintiff and would conserve both the parties' and the Court's resources while the appellate process is resolved.

However, should the Court proceed to enter a docket control order, Defendants' propose the dates set forth below. Defendants arrived at these proposed dates by reviewing the Court's current trial schedule in early 2020 and polling Defendants' counsel concerning availability for trial. Defendants agree with Plaintiffs that an early Initial Pretrial Conference to address the fully-briefed motions (*e.g.* Motions for Summary Judgment, *Daubert* Motions, and Motions *in Limine*) will be beneficial to the Court and the parties by narrowing and clarifying the issues for pre-trial proceedings and, if necessary, trial itself. Although the parties accomplished a great deal prior to the Supreme Court entering its stay, quite a bit more remains to be done on such things as exhibits, deposition designations, jury instructions, and other pretrial matters. Therefore, Defendants propose holding the Initial Pretrial Conference at the outset so that the Parties can fully incorporate

the Court's rulings into these processes, which should result in fewer disputes for the parties and the Court to resolve.

**Proposed Docket Control Order Dates**

<b>Event</b>	<b>Plaintiff's Proposed Date</b>	<b>Defendants' Proposed Date</b>
Trial commences	January 6, 2020	April 13, 2020
Jury Selection	January 6, 2020	April 13, 2020
Final Pretrial Conference	December 13, 2019	March 11, 2020
Serve Objections to Exhibit Lists, Witness Lists, Deposition Designations and Counter-Designations	December 6, 2019	January 30, 2020
File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.	December 6, 2019	January 30, 2020
File Joint Pretrial Order, Joint Proposed Jury Instructions and Form of the Verdict, Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations.	October 18, 2019	December 19, 2019
Initial Pretrial Conference to address pending motions	September 26, 2019	November 14, 2019

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this 26<sup>th</sup> day of August, 2019.

/s/ Jennifer H. Doan

Jennifer H. Doan